

1 that Native filed a joint motion, another Petition to Accept,
2 and then the Commission adopted Docket -- whenever it was -- 5
3 years after it was originally filed. Benchmark filed an
4 application and was the sole applicant, and that application
5 was accepted by the Commission. We know all of that stuff.
6 It's already reflected in the Commission records. Objection
7 is sustained. All of that material is stricken.

8 MR. SHOOK: Your Honor, the Bureau wishes to state
9 for the record that while no specific objection was lodged to
10 a number of places where Benchmark was characterizing or
11 taking phrases from a letter or document, the Bureau wishes to
12 make clear that the entire document is going to be available
13 to Your Honor, and that whatever characterization is proper is
14 something that the parties are free to argue about in findings
15 and conclusions. I could give one example to Your Honor so
16 Your Honor would know what I'm referring to here.

17 JUDGE LUTON: Let me see if I understand. In
18 certain of its testimony, Benchmark has, in the Bureau's view,
19 certain documents or certain events in a particular way,
20 namely a way that would favor Benchmark's position in the
21 case. The Bureau is telling me that it doesn't necessarily
22 agree with that -- with those characterizations to the extent
23 that they're there and it feels free to place different
24 characterizations; that is to say, characterizations different
25 from the one that Benchmark may have placed on the same

1 document or the same events.

2 MR. SHOOK: Yes, sir.

3 JUDGE LUTON: Sure. Basic, understood. If the
4 parties agreed, then we wouldn't be here today, all right?
5 Okay, that's the end of the objections.

6 MR. SHOOK: Your Honor --

7 JUDGE LUTON: Or is it?

8 MR. SHOOK: It -- they do continue. With respect to
9 page 38, the Bureau objects to -- well, the Bureau objects to
10 the entirety of page 38, 39, 40, 41, 42, 43, through the
11 paragraph that concludes on the top of page 44. The Bureau
12 believes all of this information is irrelevant.

13 (Pause.)

14 JUDGE LUTON: I'll take a big swing at your
15 testimony here, Mr. Meyers. Why is it necessary for Benchmark
16 to offer a summary, what it calls "A Summary of Issue One," at
17 this point in the case? I think what I'm seeing here would
18 more appropriately be put in a paper I'm going to ask the
19 parties to write to me at the end, end of the case, namely
20 "Proposed Findings of Fact and Conclusions of Law." That's
21 the place for a party's argument. This summary reminds me --
22 I don't know, it, it -- well, Mr. Meyers, do you take umbrage
23 to what you consider an attack upon your integrity in some
24 places in the document. That isn't evidentiary. Then there
25 is certain biographical information here which is said to be

1 irrelevant. I -- to me that, that information is no more
2 irrelevant than it is in any other case where we routinely
3 permit this kind of stuff to come in. Some acceptable and
4 unacceptable are kind of interspersed. I mean they, they just
5 go right through the -- all the pages that are -- concerning
6 which there's an objection. Because I think that there are
7 some portions of this which will survive an irrelevancy
8 objection, or a relevancy objection, I am going to require the
9 Bureau to go through it paragraph by paragraph as I did
10 before, or I could take the view the Bureau has already gone
11 through it declaring everything in one fell swoop to be
12 irrelevant, and then I'll state my agreements or disagreement
13 by going through it myself. I think I'll do it that way. The
14 Bureau has objected, as I understand it, to everything
15 starting at the top of page 38 through some portion of
16 page 44. How far down on 44 do we go, Mr. Shook?

17 MR. SHOOK: Your Honor, the objection that I am
18 referring to would end with the second line on paragraph --

19 JUDGE LUTON: Second line on page 44?

20 MR. SHOOK: Yes, sir.

21 JUDGE LUTON: Okay, thank you. All right, go
22 through. The first paragraph, Mr. Meyers tells us who
23 Benchmark is, who the principals are, and what it intends to
24 do. Then we've got some biographical information about
25 Mr. Meyers and then Mr. Miller, and Mr. Brelsford, and then

1 we've got something about Brelsford's experience, some of the
2 good things that Brelsford has done in the radio business.
3 Okay, then we get back to Mr. Meyers. It tells us that he's
4 aspired to ownership going way back. Okay, he prepared some
5 applications but didn't file them. He tried again, he was
6 thwarted, he asked an engineer -- all of this is plainly
7 irrelevant. I'm going to strike all that, Mr. Meyers. We're
8 on page 40 now.

9 MR. MEYERS: Um-hum.

10 JUDGE LUTON: The Commission, concerned with the
11 lack of a public service program was producing this and that
12 while Meyers' application was pending. Meyers received a
13 letter from the Commission. Yeah, that's all nice but
14 irrelevant. Meyers prepared many 301's after that. He wasn't
15 a principal until he formed Benchmark. Meyers has been
16 responsible for many innovations in broadcasting. Terrific
17 but irrelevant. In 1975, he formed something there. If this
18 were a case in which we were concerned about Benchmark's and
19 Mr. Meyers' broadcast experience, I might take a different
20 view of these things but this is not that kind of case.

21 MR. MEYERS: I was presenting it primarily for
22 character purposes.

23 JUDGE LUTON: Yeah, well, it, it -- and , and I know
24 the Designation Order talks about character and that sort of
25 thing but pats on the back won't get it in this kind of case.

1 The Commission looks for something else when we talk about
2 character as opposed to how you are perceived by your neighbor
3 and fellow man. That isn't quite what the Commission had in
4 mind. Paragraph beginning at the bottom of page 41, that's
5 irrelevant, "In 1975." "Other broadcast related
6 accomplishments," top of page 42, irrelevant. "Meyers
7 conceived a theory for" doing all kinds of great things,
8 irrelevant. Okay, this is argumentative here where we have --
9 the paragraph beginning at the bottom of page 42, Mr. Meyers
10 tells us that he has always lived by the book, never allowed
11 anyone to violate anything where he was involved. He has put
12 his job on the line with owners who wanted to transgress --
13 none of that is relevant. Okay, "Benchmark acquired --" I'm
14 on page 43 now, second full paragraph. That first sentence
15 tells us what we already know, that Meyers and his partners
16 certify their financial -- the financial wherewithal, namely
17 that Benchmark had the resources to build a station without
18 income, requested an upgrade. None of that is in question.
19 Consequently, it does not need to be said again; and this next
20 portion is argumentative, "This is NOT saying we were unable
21 to meet the Commission requirement, but that to have to build
22 a class a facility on now obsolete requirements of a frequency
23 no longer assigned to WCCJ and then find that the upgrade
24 placement --" It goes on, and on, and on. That's just
25 argument which you will be free to make when we get to the --

1 get to a point in this case where argument is appropriate.
2 It's not appropriate now. We're looking for evidence, not
3 argument, so all that is stricken right through the last two
4 sentences, the last two lines, on page 44, carrying all the
5 way back without interruption to the second full paragraph
6 beginning on page 40; and prior to that, all of page 37 -- no,
7 I think we've already gone through that. That's, that's it.

8 MR. MEYERS: I'm, I'm sorry, on page 40?

9 JUDGE LUTON: Okay, let's try it again. At page 38,
10 there is some material headed "Summary of Issue One."

11 MR. MEYERS: Um-hum.

12 JUDGE LUTON: All that page stays, all of page 39
13 stays, right through the first full paragraph beginning on
14 page 40. That stays, and then starting with the words,
15 "Meyers as aspired to ownership since he first entered the
16 business" on page 40, through 41, through 42, through 43,
17 through the first two lines on 44. That material is stricken
18 as irrelevant. To that extent, the Bureau's objection is
19 sustained in part, and overruled in part.

20 MR. SHOOK: Your Honor, the Bureau's next objection
21 concerns the paragraph that appears -- the only complete
22 paragraph that appears on page 45. The Bureau objects to that
23 paragraph on the grounds of relevancy. The reason for that,
24 Your Honor, is that when the Timberland Motel may have been
25 rented and what was stored there all came into play after the

1 | submissions that were made to the Commission, which are being
2 | questioned in this proceeding. That's, that's how I
3 | understand this situation, that is, renting of a motel room
4 | has no relation to the questionable representations that were
5 | made by Benchmark. So the Bureau would object on the grounds
6 | of -- that that paragraph is irrelevant.

7 | (Pause.)

8 | JUDGE LUTON: The claim, as I understand it, is that
9 | this paragraph tells us about events subsequent to the time
10 | that the Commission is interested in, is that right?

11 | MR. SHOOK: That's how I understand the time
12 | sequence, Your Honor. I, I could be wrong but that's how I
13 | understand it.

14 | MR. MEYERS: I believe the receipts in Attachment 90
15 | primarily reflect the time for this, and a particular credit
16 | card show the receipts that I had for that, but I had been
17 | running it before then, about 6 months. And I, I just didn't
18 | have the receipts available; couldn't find them. Since about
19 | December when we made the visit over there, I had made a
20 | tentative arrangement to make use of one of those --

21 | JUDGE LUTON: The Commission has expressed an
22 | interest in Benchmark's activities back about when?

23 | MR. SHOOK: Your Honor, the Commission particular
24 | concerns were with the filing made in March of 1988 --

25 | JUDGE LUTON: '88, yeah.

1 MR. SHOOK: -- another filing that was made in May
2 of 1988 --

3 JUDGE LUTON: Yeah.

4 MR. SHOOK: -- a further filing that was made in
5 August of 1988, and the earliest receipt that I see here
6 pertains to a period beginning in December of 1988. That's,
7 that's why I had difficulty making the connection.

8 JUDGE LUTON: Yeah, and then the narrative, the
9 first date stated in the narrative, is 1990. This got to do
10 with anything relevant, Mr. Meyers? I'm sufficiently doubtful
11 until -- it wouldn't take much from you to cause me to
12 overrule this objection --

13 MR. MEYERS: Only, only --

14 JUDGE LUTON: -- and let it stand because I'm not --
15 it wouldn't take much from you to cause me to overrule the
16 Bureau's objection here and let it stand if you can show me a
17 little bit of relevancy here.

18 MR. MEYERS: It, it -- I made that statement about
19 my brother only because he had stayed there during the entire
20 duration; however, it was getting to be apparent that we
21 weren't going to get a resolution very quickly, and he wanted
22 to make more than \$100.00 a week plus his room and board.

23 JUDGE LUTON: "Much of the equipment already at
24 Chatom was stored in room eight --" okay. Later in about
25 1990, some other things happened. The landlord is a certain

1 person. Benchmark continues to store the equipment in there,
2 also keeps a trailer there that was brought to Chatom in 1988.
3 Show me some relevancy here. I don't see it.

4 MR. MEYERS: I guess I was trying to demonstrate the
5 fact that we did have equipment there even though statements
6 had been made that we didn't.

7 JUDGE LUTON: Okay. You know, it just may be in
8 this case, Mr. Meyers, you're trying to respond to, to too
9 much. It's --

10 MR. MEYERS: Could be.

11 JUDGE LUTON: It's like it's, it's not Native
12 American, it's not all of those people haphazard and whoever
13 they were that you were -- you previously did battle with, and
14 all of the unkind things they may have said about Benchmark.
15 They no longer play a role here. This is Benchmark and the
16 FCC.

17 MR. MEYERS: It, it, it seems to me that because of
18 the comments made by the Commission subsequent to all of this
19 that they had intertwined, I think, at that time, the comments
20 made by Native American was their basis for our alleged
21 misrepresentations.

22 JUDGE LUTON: So you feel the need to strike at --

23 MR. MEYERS: I, I feel -- I don't feel that I'm
24 fighting Mr. Gehman. I feel that I'm fighting the
25 Commission's acceptance of Mr. Gehman.

1 JUDGE LUTON: Yeah, okay. That's understandable.
2 I'm going to let the first sentence stand, "Much of the
3 equipment already at Chatom was stored in room eight of the
4 Timberland Motel, a room which Benchmark rented for nearly 2
5 years (see attachment 90)." Now, I'm going to take out the
6 next sentence, "Later when Meyers' brother wanted to seek
7 work," blah, blah, blah, who the landlord is, and all that
8 sort of thing. I'm going to strike all of that, and I'll let
9 stand the claim that Benchmark continues to store equipment
10 inside, and "since surrendering its original transmitter site
11 following the Commission's decision to assign the upgrade to
12 Chatom, has also kept the trailer there that was brought to
13 Chatom in 1988." Okay, what I'm striking is the second
14 sentence and a portion of the third sentence, the stricken
15 words being, "the landlord is Barbara Hamid (see attachment
16 #94 [sic] and." That's stricken. The modified sentence then
17 reads, "Benchmark continues to store equipment inside, and
18 since surrendering its original transmitter site" and so on
19 through the end. That is my ruling. Next.

20 MR. SHOOK: Your Honor, with respect to the next
21 paragraph, the, the Bureau views this paragraph as basically
22 argumentative as opposed to evidence and would object to it on
23 the basis that it is argumentative.

24 JUDGE LUTON: "Meyers has always taken the
25 Commission at their word. In the past, the rules and

1 regulations were more specific --" No time is wasted trying
2 to do this and that, and blah, blah, blah. That's argument,
3 sustained, and I'll strike that, that paragraph. The place
4 for argument is in Proposed Findings and Conclusions at the
5 end of the case. It would be perfectly permissible for you,
6 Mr. Meyers, to say these very things in Proposed Findings, if
7 you feel the need to do that.

8 MR. MEYERS: Um-hum.

9 JUDGE LUTON: I'm not suggesting that you do, but
10 appropriate there, inappropriate where the quest is for
11 evidence.

12 MR. MEYERS: I see.

13 JUDGE LUTON: Next.

14 MR. SHOOK: Your Honor, the Bureau has no objection
15 to the first portion of the following, of, of the following
16 sentence, which would begin, "Meyers knew at least one
17 television permittee that had felt the wrath of the
18 Commission's 'Do It or Lose It Policy --'" I take it "lose"
19 it is L-O-S-E as opposed to "loose it."

20 MR. MEYERS: Sorry, yes.

21 MR. SHOOK: The Bureau does object to the remainder
22 of that sentence on the grounds that it is irrelevant. The
23 Bureau objects to the sentence that follows on the grounds it
24 is irrelevant --

25 JUDGE LUTON: I'm going to strike the whole thing.

1 I think it's all irrelevant. Next.

2 MR. SHOOK: Your Honor, the Bureau objects to the
3 next paragraph on the grounds that it is both argumentative
4 and irrelevant. I should say, Your Honor -- let me rephrase
5 that. The part of the paragraph that begins, "Meyers was
6 having some difficulty," et cetera, through the middle of the
7 paragraph, which reads, "Meyers is used to dealing in this way
8 and such arrangements work most of the time," the Bureau
9 believes that portion to be argumentative. The remainder of
10 the paragraph beginning with, "An example of one such
11 agreement," et cetera, the Bureau believes that portion of the
12 paragraph to be irrelevant.

13 (Pause.)

14 JUDGE LUTON: Mr. Meyers, the problem that I see is
15 that this is all by way of explanation rather than hard facts.
16 Yet, having some difficulty and as a result what you call the
17 normal way of doing was a bad one: no letters, receipts,
18 handshake agreements were in order, and all that sort of
19 thing. That's all by way of explanation. It's the kind of
20 thing -- I suppose if you were sitting on the stand and you
21 had your own lawyer questioning you, you could get some of
22 this stuff in, but instead, in a case like this, you're going
23 to be stuck with what appears on the, the printed page and
24 that's all, unless you're intending to get up there and
25 testify about that, I don't know.

1 MR. MEYERS: I was again trying to paint a picture
2 that we had a very limited time considering the extended
3 period of time that it took to acquire a lease for the ground.

4 JUDGE LUTON: Why don't you do it where it can't be
5 objected to, namely in Proposed Findings, because it is
6 argument. This picture your painting is one of the rushed
7 businessman who had to cut corners, you know, the walls come
8 tumbling down, and all that sort of thing. It's well to show
9 that but it's even better to show it by way of some evidence.
10 If there was something -- I don't know, I can't imagine what
11 it might be, but some factual happenings that indicated that
12 it was necessary to dispense with the usual ways of doing
13 business, as opposed to just assertions by Mr. Meyers that it
14 was necessary to dispense with the usual ways of doing
15 business, which is what this paragraph does. It's just naked
16 argument; naked argument is all it is. It's not evidence.

17 MR. MEYERS: I understand.

18 JUDGE LUTON: In the Proposed Findings you can put
19 it in there. It isn't going to help you any, not without some
20 evidentiary support, but better there than here. Here it's
21 nothing. I'm going to strike the entire paragraph right
22 through the first two sentences the first two lines, at the
23 top of page 47. All right, Bureau.

24 MR. SHOOK: The Bureau's next objection appears on
25 page 48. The second, excuse me, second paragraph beginning,

1 "In the months that followed," et cetera. The Bureau objects
2 to the entire paragraph.

3 JUDGE LUTON: Does the Bureau object to the first
4 sentence, "In the months that followed." Did it, did it
5 include that in its objection? I, I don't remember, that's
6 why I'm asking. I'm not suggesting that it should or should
7 not.

8 MR. SHOOK: Yes, sir, because the, the way the
9 sentence reads it casts a spin on what Mr. Eads was doing, and
10 Mr. Eads' letters essentially speak for themselves, and in any
11 event the Bureau would cast it in terms of Mr. Eads certainly
12 questioned what was going on. Whether or not he criticized
13 it, I suppose, is in the eye of the, the reader.

14 JUDGE LUTON: Well, precisely, and that's what we're
15 getting here from Mr. Meyers. The way that Mr. Meyers took it
16 was that Eads criticized Benchmark on several occasions. I
17 don't see anything wrong with that. Maybe Mr. Eads didn't
18 intend criticism, or maybe he did, but whatever he intended
19 Mr. Meyers is free to react to it and to tell us what his
20 reaction was. Absolutely unobjectionable, in my opinion.

21 MR. SHOOK: The Bureau would, nevertheless, object
22 to the remainder of the paragraph.

23 JUDGE LUTON: On what basis?

24 MR. SHOOK: Your Honor, the Bureau sees no relevancy
25 to what appears there.

1 JUDGE LUTON: What are you telling us, Mr. Meyers,
2 that Benchmark ceased further construction --

3 MR. MEYERS: It was my understanding that when, when
4 one --

5 JUDGE LUTON: Let me, let me try it here --

6 MR. MEYERS: I'm sorry.

7 JUDGE LUTON: -- and then just help me out.
8 Benchmark ceased construction at the site because it
9 understood from its experience of almost 40 years that it
10 should not proceed without Commission permission. Is that
11 what you're telling us here?

12 MR. MEYERS: Yes, sir.

13 JUDGE LUTON: Objection is overruled. The sentence
14 stands. Next objection.

15 MR. SHOOK: The Bureau would object to the following
16 paragraph, Your Honor, the paragraph that begins, "When
17 Benchmark acquired the services of John Spencer," et cetera.
18 The Bureau believes that paragraph is irrelevant.

19 JUDGE LUTON: The way I look at it is that it's
20 consistent with Mr. Meyers' understanding on behalf of
21 Benchmark as expressed in the preceding paragraph. Objection
22 is overruled. Next.

23 MR. SHOOK: Your Honor, the Bureau would object to
24 the final paragraph on page 49. That, that paragraph is
25 argumentative.

1 JUDGE LUTON: All right, self-serving, that doesn't
2 help you. I, I know Benchmark wants to slam its tormentor but
3 that won't help you here. Sustained.

4 MR. SHOOK: Your Honor, along those lines the Bureau
5 would also object to the final sentence of the preceding
6 paragraph beginning with, "This statement is not intended," et
7 cetera. The Bureau would object to that sentence.

8 JUDGE LUTON: Well, okay, it's just that sentence
9 but this --

10 MR. SHOOK: It may well be that this is simply a
11 statement on the part of Mr. Meyers' part as to what that --

12 JUDGE LUTON: I think so. I think that's all it is.

13 MR. SHOOK: With that understanding in mind,
14 Your Honor, the Bureau withdraws its objection.

15 JUDGE LUTON: All right.

16 MR. SHOOK: The, the Bureau has no further
17 objections.

18 JUDGE LUTON: Okay, we got through Issue No. 2
19 without objection.

20 MR. SHOOK: Yes, sir.

21 JUDGE LUTON: All right. Then Benchmark some
22 Exhibit 1 for identification, including the attachments which
23 have not fallen by necessity because they're no longer
24 supported by narrative testimony, because that testimony has
25 been stricken, is received in evidence as Benchmark

1 Exhibit No. 1. That consists of two volumes.

2 (Whereupon, the document marked as
3 Benchmark Communications No. 1 was
4 received into evidence.)

5 MR. SHOOK: Your Honor, insofar as we need to refer
6 to the various attachments that are referenced in Benchmark's,
7 Benchmark's, Benchmark's Exhibit 1, the Bureau would request
8 that there be an understanding that we would paginate those
9 attachments beginning with the first substantive page, as
10 opposed to having Attachment 50, the cover sheet, being page 1
11 and the following pages being page -- pages 2, et cetera. The
12 Bureau would request that for purposes of consistency so that
13 we can all follow what's going to happen, that the pages be
14 numbered, not with the cover sheet but with the first
15 substantive page; and Your Honor would note that in looking
16 through the various attachments, the pages, the pages are not
17 numbered, so that it would become necessary in terms of
18 referring to a page in a particular attachment. We're going
19 to be numbering them as we go along, that's what I'm trying to
20 say.

21 MR. MEYERS: No objections. May I suggest a method?
22 For Attachment A, it would be page A1, A2, A3, A4; "B" would
23 be B1, B2, and so on. I'm sorry it was not done that way
24 before.

25 JUDGE LUTON: The two of you talk about it outside

1 the hearing and agree on a common scheme. Whatever it is will
2 suit me.

3 MR. SHOOK: Thank you.

4 JUDGE LUTON: That's about all that I can say.

5 MR. SHOOK: Thank you.

6 JUDGE LUTON: Shall we take a recess or shall we go
7 ahead and take the Bureau's case?

8 MR. SHOOK: Well, why don't we take the Bureau's
9 case, Your Honor, and then we can recess, if that's
10 acceptable.

11 JUDGE LUTON: Mr. Meyers, you agreed with that
12 suggestion there rather quickly. Must mean that you don't
13 have a lot of objections to what the Bureau intends to offer.

14 MR. MEYERS: I have reviewed the Mass Media exhibits
15 and don't have any objections to them, sir.

16 JUDGE LUTON: None at all?

17 MR. MEYERS: None whatsoever.

18 JUDGE LUTON: All right, why don't you make the
19 offering, Mr. Shook?

20 MR. SHOOK: The Bureau would offer as Mass Media
21 Exhibit No. 1 a 25-page document, which is entitled, "Mass
22 Media Bureau's Request for Admissions of Fact and Genuineness
23 of Documents." The Bureau offers that exhibit into evidence.

24 JUDGE LUTON: Go ahead and offer them all since we
25 don't have any objections.

1 MR. SHOOK: With respect to Bureau Exhibit No. 2, it
2 is entitled, "Answers to Admissions," and it consists of 62
3 pages. Bureau Exhibit No. 3 is a one-page document entitled,
4 "Notice of Actual Construction or Alteration." Bureau
5 Exhibit No. 4 is a 101-page document entitled, "Opposition to
6 Petition to Deny," that was filed with the Commission on
7 April 25, 1991; and Bureau Exhibit No. 5 is a portion of an
8 Application for Construction Permit which was filed by
9 Benchmark on December 28 -- it looks like 19 --

10 MR. MEYERS: I have it here December 13, 1989.

11 MR. SHOOK: -- '89, December 28, 1989, and that
12 consists of 19 pages.

13 (Whereupon, the documents referred to
14 as Mass Media Exhibits 1 through 5
15 were marked for identification.)

16 JUDGE LUTON: All right, the Bureau's offering of
17 Exhibits 1 through 4 -- 5 --

18 MR. SHOOK: Five.

19 JUDGE LUTON: -- is received in evidence. It's
20 received as Exhibits 1 through 5. There being no objection --
21 there is no objection?

22 MR. MEYERS: No, sir.

23 JUDGE LUTON: Thought that's what I was to
24 understand.

25 (Whereupon, the documents referred to

1 as Mass Media Exhibits 1 through 5
2 were received into evidence.)

3 JUDGE LUTON: I was -- well, Mr. Meyers, you'll see,
4 now, we just got some stuff in evidence here that contains a
5 lot of explanation by Benchmark and it was offered by the
6 Bureau, which means the Bureau is in no position to object to
7 the explanation that you've put out, you've put forth in
8 certain of this material here. So while I had to excise some
9 of those explanations from your direct testimony, you're going
10 to get some quantity of explanations nevertheless.

11 MR. MEYERS: I understand.

12 JUDGE LUTON: How funny these proceedings can be.
13 That will conclude the evidentiary session, so the record is
14 closed.

15 MR. SHOOK: Your Honor --

16 JUDGE LUTON: Yes.

17 MR. SHOOK: -- the Bureau would call Mr. Meyers to
18 the stand.

19 JUDGE LUTON: The Bureau certainly did make that
20 clear. It sent a letter asking that Mr. Meyers appear as a
21 witness. I guess we got things out of sequence here.
22 Mr. Meyers should have been on after his testimony, his
23 written testimony, was concluded with, before we took the
24 Bureau's. Well, I suppose it doesn't hurt anything. We will
25 take a 10-minute recess at this point.

1 (Whereupon, a brief recess was taken.)

2 JUDGE LUTON: If you would take the stand,
3 Mr. Meyers, we'll proceed. Raise your right hand, sir.
4 Please proceed.

5 Whereupon,

6 JOHN RAYMOND MEYERS

7 having first been duly sworn was called as a witness herein
8 and was examined and testified as follows:

9 CROSS EXAMINATION

10 BY MR. SHOOK:

11 Q Mr. Meyers, it would be helpful for purposes of this
12 testimony if you have your exhibits with you, and also if you
13 had a -- do you have your copy of the Bureau's exhibits?

14 A Yes, sir, I do.

15 Q It would be helpful if you had those with you, also.
16 Mr. Meyers, if I ask you a question that you don't understand
17 please say so and I'll try to --

18 A I understand.

19 Q -- rephrase the question to make it understandable.
20 Could you please turn to Attachment 40? If you would take
21 a -- as much time as you need to familiarize yourself with the
22 letter.

23 (Pause.)

24 A I'm familiar with it.

25 Q Is it your recollection that you received this

1 letter from Mr. King shortly after the date of the letter?

2 A Yes, it is.

3 Q So, in other words, you probably had this letter and
4 read it by November 1st, 1987?

5 A I believe that would be true, yes.

6 Q Would it be fair to say that as of November 1, 1987,
7 you understood that Benchmark had to be able to demonstrate by
8 April 6th, 1988, that it had made substantial progress toward
9 placing WCCJ in operation or risk loss, risk the loss of the
10 permit?

11 A Yes, I understood that.

12 Q Would it be fair to say that as of November 1, 1987,
13 you understood that substantial progress toward placing the
14 radio station in operation encompassed obtaining studio
15 equipment and studio space?

16 A Yes.

17 Q Was it also your understanding that having a viable
18 transmitter site was necessary to assure the Commission that
19 Benchmark had made substantial progress toward placing the
20 station in operation?

21 A Yes.

22 Q Was it also your understanding that having a tower
23 in place was necessary to assure the Commission that Benchmark
24 had made substantial progress toward placing the station in
25 operation?

1 A Yes, sir.

2 Q Was it your understanding as of November 1, 1987,
3 that Benchmark actually had to have the station in operation
4 by April 6, 1988, in order to avoid loss of the permit?

5 A Yes, sir, it was.

6 Q I'd like you to turn to Attachment 41. Is it your
7 understanding that Attachment 41 was the first letter sent by
8 Mr. Huggins in terms of negotiating a lease for the WCCJ
9 transmitter site?

10 A It is the first letter that was sent to Mr. Harper.

11 Q Are you suggesting that there are letters that were
12 sent prior to December 4, 1987?

13 A What I'm saying is that there was discussion about
14 finding a site between November 1st, approximately, and
15 December 4th, and it was decided mutually by Mr. King,
16 Mr. Huggins, and myself that we were better off trying to
17 pursue the one that was actually specified in the construction
18 permit. Due to the time frame involved.

19 Q What was the relationship between Mr. Huggins and
20 Benchmark?

21 A Mr. Huggins was representing us as a local attorney
22 in the state of Alabama.

23 Q In other words, Benchmark had retained Mr. Huggins'
24 firm?

25 A Yes, sir.

1 Q Could you please turn to Attachment 42? The
2 document in question is dated December 17, 1987. Could you
3 tell us when this document first came to your attention?

4 A I believe it was sent to me subsequent to that date
5 but I can't tell you specifically when. It was prior to the
6 time that I went there in the end of the month, so it would
7 have been within a week's frame of this date.

8 Q Is it your recollection that the document was sent
9 to you by Mr. Schell?

10 A Yes, sir.

11 Q Was your first trip to Chatom, Alabama, following
12 receipt of Mr. King's letter that we have gone over,
13 Attachment 40, was your first trip to Chatom in late December,
14 mid- to late December in 1987?

15 A Yes, sir.

16 Q The trip that you took in December, 1987, that was
17 to deal with matters concerning two different applications,
18 was it not?

19 A I believe at that time we also had a proposed
20 application before the Commission for Gulf Breeze, Florida.

21 Q Now, what was the purpose for your making contact
22 with a number of mobile home/trailer sales lot dealers?

23 A To acquire housing to go on the site for WCCJ as an
24 operating facility. We needed that housing out there and as
25 quickly as possible. Constructing something was somewhat out

1 of the question due, again, to the time frame, and at that
2 time the only other practical solutions were mobile homes.

3 Q Now, did you collect any information as to the names
4 of the dealers themselves?

5 A I believe at that time the ones that I approached I
6 acquired business cards from. To the best of my recollection
7 that was some information that I got from them as, as written
8 information.

9 Q And these are business cards which you no longer
10 have.

11 A I cannot find them.

12 Q With respect to your December trip to Gulf Breeze
13 and your inquiries among trailer lot dealers, did you reach an
14 understanding with any of the trailer lot dealers that a
15 particular trailer should be set aside or delivered to Chatom?

16 A Not at that time. I, I reviewed what the various
17 dealers had available. I told them what was specified, what
18 we were looking for in terms of condition, price range,
19 suitability, and each one that I went to I looked at some of
20 the ones that they had, but no particular decision was made at
21 that time.

22 Q What was the price range?

23 A Anywhere from \$1,000.00 to \$5,000.00.

24 Q If you would please turn to Attachment 45? It's
25 going to be in your second volume. Is it your recollection